

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Docket HWCA 20081836

CONSENT ORDER

Route 395/ Post Mile 27 in Lassen County,
near Doyle, CA.

California, Department of Transportation
4300 Caterpillar Road,
P.O. Box 496073
Redding, CA 96049-6073
ID No. CAC002611536

Baldwin Contracting Company, Inc.
1764 Skyway
Chico, CA 95928
ID No. CAC002558629

Central Striping Services, Inc.
3489 Luyung Drive
Rancho Cordova, CA 95742
ID No. CAL000196280

Respondents.

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and the California Department of Transportation (CalTrans), a California state government agency (Respondent CalTrans), Baldwin Contracting Company, Inc., a California corporation (Respondent Baldwin) and Central Striping Service, Inc., a California corporation (Respondent CSS), (together, "Respondents") enter into this Consent Order and agree as follows:

1. Respondents generated, handled, and/or stored hazardous waste along the highway shoulder of Route 395/ Post Mile 27 in Lassen County, near Doyle, CA.

2. The Department inspected the Site on January 17, 2007.

3. The Department alleges the following violations:

3.1. The Respondents violated California Health & Safety Code section 25201, subsection (a) in that on or about January 17, 2007, hazardous wastes in containers were observed to be accumulated and stored at the generation site (Herlong Shoulder Widening Project on SR 395) for over 90 days (May 9, 2006 through January 30, 2007 and May 30 through January 30, 2007) without a permit or grant of interim status. Further, that on or about January 17, 2007, hazardous waste containers were observed to not have the appropriate labeling in accordance with the requirements of California Code of Regulations, title 22, section 66262.34, which allows generators to accumulate hazardous waste for up to 90 days without a permit provided they are in compliance with this regulation. A "HAZARDOUS WASTE" label was observed to be affixed to each of the containers; however, none of the required information was provided.

3.2. The Respondents violated California Code of Regulations, title 22, section 66265.171 in that on or about January 17, 2007, one of the seven hazardous waste containers was observed to be structurally defective, with a large indentation on its side.

3.3. The Respondents violated California Code of Regulations, title 22, section 66265.174 in that on or about January 17, 2007, containers were not inspected on a weekly basis to detect any leaks or deterioration.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondents waive any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondents do not admit the violations alleged above, except as follows: Respondents admit the facts alleged above for the purposes of any subsequent action

brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within 5 years of the date the violations occurred.

SCHEDULE FOR COMPLIANCE

10. Respondents shall comply with the following:

10.1.1. The alleged violations have been corrected.

10.1.2. To ensure continued compliance with applicable hazardous waste laws and regulations, Respondents shall monitor future projects and track their compliance efforts in accordance with their compliance work plans as submitted to the Department for review and comment.

10.1.3. Respondent CSS shall report the results of its compliance monitoring efforts to the Department at 6 months and 12 months, respectively, after the effective date of this Consent Order. Information in the compliance monitoring report is to demonstrate that hazardous waste requirements are being met at job sites as a result of the changes made in work place practices such as employee training, revised policies and procedures, or other mechanisms or systems that are implemented. The compliance monitoring report shall include, but not be limited to, the following information: (a) number of jobs that involved yellow thermoplastic stripe removal; (b) name and location of those projects that generated hazardous waste; (c) verification that inspections of container areas are being conducted on a weekly basis and any actions taken to maintain compliance; (d) disposition of the hazardous waste generated; (e) documentation that employees have been trained on and understand the proper management of hazardous waste, in accordance with the revised policies and procedures and applicable laws and regulations; and (f) a description of how compliance is being achieved through the mechanisms or systems that are now being implemented.

10.1.4. Respondent Baldwin's compliance workplan is detailed in a letter to the Department dated March 10, 2008. Respondent Baldwin shall report the results of its compliance monitoring efforts for projects involving yellow thermoplastic stripe removal to the Department at 6 months and 12 months, respectively, after the effective date of this Consent Order. Information in the compliance monitoring report will demonstrate that hazardous waste requirements are being met at job sites involving

yellow thermoplastic stripe removal as a result of the changes made in work place practices such as employee training, revised policies and procedures, and other mechanisms or systems that have been implemented, all of which are described in greater detail in Respondent Baldwin's compliance workplan. The compliance monitoring report shall include, but need not be limited to, the following information: (a) number of jobs that involved yellow thermoplastic stripe removal; (b) name and location of those projects that generated hazardous waste; (c) verification that inspections of container areas are being conducted on a weekly basis and any actions taken to maintain compliance; (d) disposition of the hazardous waste generated; (e) documentation that employees have been trained on and understand the proper management of hazardous waste, in accordance with the revised policies and procedures and applicable laws and regulations; and (f) a description of how compliance is being achieved through the mechanisms or systems that are now being implemented.

10.1.5. Respondent CalTrans, North Region Construction, shall report the results of its compliance monitoring efforts to the Department every 6 months after the effective date of this Consent Order, beginning December 1, 2008 and continuing through December 1, 2010. Information in the compliance monitoring report is to demonstrate that hazardous waste requirements are being met at job sites as a result of the changes made in work place practices such as employee training, revised policies and procedures, or other mechanisms or systems that are implemented. Specifically, CalTrans, North Region Construction, will provide the status of its training and contract administration process evaluation (CAPE) efforts in the compliance monitoring reports, as follows:

- December 1, 2008: Status report on the delivery of training;
- June 1, 2009: Status report on the delivery of training;
- December 1, 2009: Status report on the delivery of any additional training and the action plan for the CAPE;
- June 1, 2010: Status report on the CAPE action plan and CAPE preliminary information on projects within District 2;
- December 1, 2010: Final CAPE report will be provided.

The compliance monitoring reports for June 2010 and December 2010 shall include, but not be limited to, the following information to further demonstrate compliance efforts: (a) number of jobs that involved yellow thermoplastic stripe removal reviewed in the CAPE process; (b) name and location of the projects reviewed; (c) verification that inspections of container areas are being conducted on a weekly basis and any actions taken to maintain compliance; (d) date(s) of when hazardous waste was generated and date(s) of when shipped to a disposal site; (e) location of disposal site hazardous waste was received and date of receipt at the disposal site; and (f) a description of how compliance is being achieved through the mechanisms or systems that are now being implemented.

10.2. **Submittals:** All submittals from Respondents pursuant to this Consent Order shall be sent to:

Mr. Paul S. Kewin, Section Chief
Enforcement & Emergency Response Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826

10.3. **Communications:** All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondents in writing by a Section Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondents shall be construed to relieve Respondents of their obligation to obtain such formal approvals as may be required.

10.4. **Department Review and Approval:** If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondents with recommended changes and a date by which Respondents must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondents shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondents to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondents, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondents in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondents shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability: Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing,

monitoring, and other data generated by Respondents or on Respondents' behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondents shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondents pursuant to this Consent Order. Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondents for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondents shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondents shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondents pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondents are unable to perform any activity or submit any document within the time required under this Consent Order, the Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11. Respondents shall pay the Department a total of \$ 30,000, of which the following payments shall be made as previously agreed upon by the Department and the Respondents:

11.1. Respondent CalTrans shall pay the Department a total of \$4,507 within 30 days of approval of the Governor's budget.

11.2. Respondent Baldwin shall pay the Department a total of \$9,245 within 30 days of the effective date of this Consent Order; and

11.3. Respondent CSS shall pay the Department a total of \$16,248, as follows: one third in the amount of \$5,416 will be paid within 30 days of the effective date of this Consent Order; another third in the amount of \$5,416 will be paid within 60 days of the effective date of this Consent Order; and the remaining third in the amount of \$5,416 will be paid within 90 days of the effective date of this Consent Order.

Respondents' checks shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Paul S. Kewin, Section Chief
Enforcement & Emergency Response Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826

If Respondents fail to make payment as provided above, Respondents agree to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees. Further, if any of the Respondents fails to make payment as provided above, the Department considers that amount to be immediately due and payable by the remaining Respondents.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondents to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondents and their officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: August 12, 2008

Original signed by Jody Jones
Jody Jones, District Director, District 3
Respondent California Department of Transportation

Dated: August 20, 2008

Original signed by Rene J. Vecruyssen
Rene J. Vecruyssen, General Manager/Vice President
Respondent Baldwin Contracting Company, Inc.

Dated: August 14, 2008

Original signed by Geri Lesniewski
Geri Lesniewski, Vice President
Respondent Central Striping Service, Inc.

Dated: September 10, 2008

Original signed by Paul S. Kewin
Paul S. Kewin, Section Chief
Enforcement & Emergency Response Program
Department of Toxic Substances Control